



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

EEOC No.: 470-2014-00143

██████████,
Complainant,

v.

COMFORTS OF HOME,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”) pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-2-4(c).

On February 5, 2014, Travis Davis (“Complainant”) filed a Complaint with the Commission against Comforts of Home (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and Title I of the Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because of his disability. In order to prevail, Complainant must show that: (1) he had or was perceived to have a disability as defined under the law; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) similarly-situated employees not perceived to be disabled were treated more favorably under similar circumstances.

By way of background, Respondent hired Complainant on or about May 7, 2013 as a delivery/warehouse employee. At all times relevant to the Complaint, Complainant’s duties included but were not limited to bending, twisting, and lifting heavy objects and furniture. During the course of his employment, on or about September 13, 2013, Complainant suffered a back injury while moving recliners in the back room area of his workplace. Complainant reported the injury to his Office Manager on or about September 25, 2013 and pursuant to policy and procedure, was sent to a facility for a medical examination where he was diagnosed with a lumbar sprain, prescribed physical therapy and medication, and placed on a 15 pound pulling/pushing requirement until October 4, 2013, upon which time he was released to return to work without restriction. Shortly thereafter, on or about October 10, 2013, Complainant informed the Office



Manager that he was still experiencing back pain and was sent to a facility to be reexamined where he was prescribed additional physical therapy sessions, placed on another 15 pound restriction, and told to follow up with the doctor on or about October 17, 2013. However, that same day, October 17, 2013, Complainant sent the Office Manager an email informing him that he would be out because he had flu symptoms and was obtaining a second opinion regarding his back because he was still experience pain. That same day, the Office Manager contacted the Workers' Compensation Manager who stated "our doctor has seen [Complainant] twice and he is released. If he can't do the job maybe this isn't the line of work for him." Evidence shows that Respondent's President and CEO called Complainant, repeated the advice of the Workers' Compensation Manager to Complainant, and terminated his employment later that day.

Despite Respondent's assertions, there is sufficient evidence to believe that a discriminatory practice occurred as alleged. Complainant asserts and Respondent admits that Complainant was meeting Respondent's legitimate business expectations at the time of his termination and had not received previous disciplinary action. Moreover, no evidence has been provided or uncovered to show that Respondent attempted to enter into the interactive dialogue process with Complainant in an attempt to ascertain whether an accommodation may have assisted Complainant in maintaining his employment; rather, Respondent simply terminated his employment. As such and based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

January 8, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission